

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR 51, 52, 70, and 71**

**[FRL - \_\_\_\_\_, Docket ID No. EPA-HQ-OAR-2006-0089]**

**RIN 2060- \_\_\_\_\_**

**Prevention of Significant Deterioration, Nonattainment New Source Review, and Title V: Treatment of Corn Milling Facilities Under the “Major Emitting Facility” Definition**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA has treated wet and dry corn milling facilities differently under the Clean Air Act (CAA or Act) depending on whether the facilities in question produce ethanol fuel or ethanol fit for human consumption. In particular, EPA has applied different major source size cut offs to these facilities under the Prevention of Significant Deterioration (PSD) program based on the product these facilities produce. Additionally, when the list of source categories relative to the definition of “major emitting facility” was first promulgated on August 7, 1980, this same list was promulgated in the same final regulatory package for determining from which source categories fugitive emissions were to be counted in determining whether a source is a major source. As a result, although two of the regulatory changes being proposed today address the major source threshold for PSD sources, the remaining proposed regulatory changes address when fugitive emissions are counted for purposes of determining whether a source is a major source under the PSD, nonattainment New Source Review (NSR), or title V programs.

In today's action, we are requesting public comment on two options under consideration by EPA with respect to corn milling facilities. Under Option 1, EPA would treat wet and dry corn milling facilities in the same manner under the PSD, nonattainment NSR, and title V programs regardless of whether they produce ethanol fuel or ethanol fit for human consumption. If EPA adopts Option 1, EPA would redefine chemical process plants under the definition of "major emitting facility" to exclude wet and dry corn milling facilities which produce ethanol fuel. Under Option 2, EPA would retain the current distinction between wet and dry corn milling facilities under these regulatory programs based on whether they produce ethanol fuel or ethanol fit for human consumption. The EPA's preferred option is Option 1. We are requesting comment on these two options and on the revisions that we propose to make if we adopt Option 1.

**DATES:** Comments. Comments must be received on or before **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]**

Public Hearing. If anyone contacts us requesting to speak at a public hearing **[INSERT 20 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**, we will hold a public hearing approximately 30 days after publication in the Federal Register.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0089 by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
- Fax: 202-566-1741.
- Mail: Attention Docket ID No. EPA-HQ-OAR-2006-0089, U.S.

Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, Northwest, B102, Mail code 6102T, Washington, DC 20460. Please include a total of 2 copies.

- Hand Delivery: U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, Northwest, Room B102, Washington, DC 20004, Attention Docket ID No. EPA-HQ-OAR-2006-0089. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2006-0089. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If

EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, please see section B. of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, Northwest, B102, Mail code: 6102T, Washington, DC 20460, Attention Docket ID No. EPA-HQ-OAR-2006-0089, Washington, DC 20004]. This Docket Facility and Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA-HQ-OAR-2006-0089 is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Ms. Joanna Swanson, (C339-03), Air Quality Policy Division, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541-5282; fax number : (919) 541-5509, or electronic mail at [swanson.joanna@epa.gov](mailto:swanson.joanna@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. General Information**

#### A. What are the regulated entities?

Entities potentially affected by the subject rule for today's action include wet and dry corn milling facilities and industrial ethyl alcohol production.

Industry Group	SIC <sup>a</sup>	NAICS <sup>b</sup>
Wet Corn Milling	2046	311221
Industrial Organic Chemicals (Ethyl Alcohol)	2869	325193

<sup>a</sup> Standard Industrial Classification (1987)

<sup>b</sup> North American Industry Classification System. Entities potentially affected by the subject rule for today's action also include State, local, and tribal governments.

#### B. How Should I submit CBI to the Agency?

1. Submitting CBI. Do not submit this information that you consider to be CBI electronically through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Also, send an additional copy clearly marked as above not only to the Air docket but to: Roberto Morales, c/o OAQPS Document Control Officer, (C339-03), U.S. Environmental

Protection Agency, Research Triangle Park, NC 27711, Attention Docket ID No. EPA-HQ-OAR-2006-0089.

C. What Should I Consider as I prepare My Comments for EPA?

When submitting comments, remember to:

- i. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- ii. Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns, and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

D. How Can I Find Information About a Possible Public Hearing?

Persons interested in presenting oral testimony should contact Mrs. Pamela S.

Long, Air Quality Division (C339-03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541-0641, at least 2 days in advance of the public hearing. Persons interested in attending the public hearing should also contact Mrs. Long to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed changes.

E. How is this preamble organized?

The information presented in this preamble is organized as follows:

I. General Information

- A. What are the regulated entities?
- B. How should I submit CBI material to the Agency?
- C. What should I consider as I prepare my comments for EPA?
- D. How can I find information about a possible public hearing?
- E. How is this preamble organized?

II. Background

- A. What is the history of the term “major emitting facility”?
- B. What is the basis for the source categories listed in the definition of “major emitting facility” in section 169(1) of the Act?
- C. What is the connection between source categories regulated by NSPS and source categories listed in the definition of “major emitting facility” in section 169(1) of the Act?
- D. How was the chemical process plants source category addressed in the Research Corp. NSPS Study?
- E. How have ethanol production facilities been considered under the PSD Program?
- F. What additional changes are being proposed for wet and dry corn milling facilities?

III. Today’s Proposed Rule

- A. What is being proposed?
- B. What are the implications of changing the classification of facilities which produce ethanol fuel as a result of the wet or dry milling process?
- C. What are the implications of not changing the classification for facilities which produce ethanol fuel as a result of the dry or wet milling process?

IV. Statutory and Executive Order Reviews

- A. Executive Order 12866 - Regulatory Planning and Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Analysis

- D. Unfunded Mandates Reform Act
- E. Executive Order 13132 - Federalism
- F. Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments
- G. Executive Order 13045 - Protection of Children from Environmental Health Risks and Safety Risks
- H. Executive Order 13211 - Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act

## **II. Background**

The NSR program legislated by Congress in parts C and D of title I of the Act is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under the Act. In areas not meeting health-based NAAQS and in ozone transport regions (OTR), the program is implemented under the requirements of part D of title I of the Act for “nonattainment” NSR. In areas meeting NAAQS (“attainment” areas) or for which there is insufficient information to determine whether they meet the NAAQS (“unclassifiable” areas), the NSR requirements for the prevention of significant deterioration of air quality under part C of title I of the Act apply. The NSR regulations are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and Appendix S of part 51.

The Act, as implemented by our regulations, sets applicability thresholds for major sources in attainment areas (100 or 250 tons per year (tpy) depending on the source type) and nonattainment areas (100 tpy or less, depending on the nonattainment classification). A new source with a potential to emit (PTE) at or above the applicable threshold amount “triggers,” or is subject to, major NSR. To determine whether a source is subject to a 100 or a 250 tpy threshold for purposes of determining whether it is a “major emitting facility,” section 169(1) of the Act contains a definition of major



emitting facility.

Title V of the CAA required EPA to promulgate regulations governing the establishment of operating permits programs. The current regulations are codified at 40 CFR parts 70 and 71. All major sources, as that term is defined for title V purposes, are required to obtain title V operating permits. Sources required to obtain title V permits also include those sources subject to PSD and nonattainment NSR. Therefore, title V relies in part on the definition of major emitting facility for the PSD program and any change to this definition under this program could affect whether a source is required to obtain a title V permit.

A. What is the history of the term “major emitting facility”?

On August 7, 1977, the President signed the Clean Air Act Amendments of 1977 (1977 Amendments) into law. Those amendments established, in Part C of Title I of the Clean Air Act (the Act or CAA), a set of requirements for the prevention of significant deterioration (PSD) of air quality in so-called “clean air,” or attainment, areas. See sections 160-69, 42 U.S.C. 7470-79. As part of these amendments, the major emitting facility definition in section 169(1) was added to the CAA. The definition of major emitting facility as incorporated into section 169(1) of the 1977 Amendments reads as follows:

The term ‘major emitting facility’ means any of the following stationary sources of air pollutants which emit, or have the potential to emit<sup>1</sup>, one hundred tons per year or more of any air pollutant from the following types of stationary sources: fossil-fuel fired steam electric plants of more than two hundred and fifty million British thermal units per hour heat

---

<sup>1</sup> Under the PSD program, we define potential to emit (PTE) as the maximum capacity of a source to emit under its physical and operational design, taking into account any physical or operational limitations on the source that are enforceable as a practical matter. (See, for example, §52.21(b)(4) for the full definition of PTE.)

input, coal cleaning plants (thermal dryers), kraft pulp mills, Portland Cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than two hundred and fifty tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production facilities, chemical process plants, fossil-fuel boilers of more than two hundred and fifty million British thermal units per hour heat input, petroleum storage and transfer facilities with a capacity exceeding three hundred thousand barrels, taconite ore processing facilities, glass fiber processing plants, charcoal production facilities. Such term also includes any other source with the potential to emit two hundred and fifty tons per year or more of any air pollutant. This term shall not include new or modified facilities which are nonprofit health or education institutions which have been exempted by the State.

The source categories established in the above definition have wide applicability under the major New Source Review (NSR) and title V operating permits programs. Although the above definition includes a number of source categories, it is the history and definition of the chemical process plants source category that we will be examining relative to the production of ethanol by wet or dry corn milling (also known as wet or dry milling) in this proposal.

B. What is the basis for the source categories listed in the definition of “major emitting facility” in section 169(1) of the Act?

Section 111 of the Act requires the Administrator of EPA to establish Federal standards of performance for new stationary sources which may significantly contribute to air pollution and was intended by Congress to complement the other air quality management approaches authorized by the 1970 Act. After enactment of section 111, EPA hired Research Corporation of New England (Research Corp.) to study stationary sources of air pollution in order to establish priorities for developing and promulgating

New Source Performance Standards (NSPS). Because of limited resources, EPA could not feasibly set NSPS requirements for all categories of stationary sources simultaneously. Therefore, the goal of the Research Corp. study was to identify sources for which NSPS controls would have the greatest impact on reducing the quantity of atmospheric emissions. Research Corp. examined approximately 190 different types of stationary sources that potentially could be determined to be major emitting facilities, and provided information on the types of air pollutants that those sources emitted. The Research Corp. study was used by EPA in setting priorities for the order in which it would promulgate NSPS requirements for categories of stationary sources.

The Research Corp. study was also relied on by Congress in identifying the 28 categories of stationary sources specifically listed in the definition of the term “major emitting facility” in section 169(1) of the Act. 122 Cong. Rec. 24,520-23 (1976). As explained by Senator McClure in the Congressional Record, the EPA Administrator examined the data from the draft Research Corp. study and determined that 19 of the stationary source categories examined should initially be classified as major emitting facilities. Senator McClure further explained that the Senate Committee added nine more categories of stationary sources to the 19 selected by EPA for a total of 28 source categories. 122 Cong. Rec. at 24,521<sup>2</sup>.

In discussing the specific sources identified in section 169(1), Senator McClure stated:

---

<sup>2</sup> Although a draft of the Research Corp. study is referenced in the Congressional Record, the study entitled “Impact of New Source Performance Standards on 1985 National Emissions from Stationary Sources” was finalized in April, 1977 (EPA-450/3-76-017).

Mr. President, I ask unanimous consent that an extract from that report of the Research Corp. of New England, listing the 190 types of sources, from which the EPA took 19, and the committee took 28, be printed in the Record at this point as an illustration of what the committee examined and the kinds of sources the committee intended to include and exclude, recognizing that it is neither exclusive nor invariable. There is administrative discretion to add to the list, to change the list. But the committee spoke very clearly on its intent on that question.

122 Cong. Rec. at 24,521 (1976). As a result of Senator McClure's action, the table from the draft Research Corp. report containing the list of 190 types of sources was printed in the Congressional Record.

C. How was the chemical process plants source category addressed in the Research Corp. NSPS Study?

The approximately 190 source categories identified in Research Corporation's report were further classified into ten general groups for purposes of the study – stationary combustion sources, chemical processing industries, food and agricultural industries, mineral products industries, metallurgical industries, and miscellaneous sources (evaporation losses, petroleum industry, wood products industry, and assembly plants).

For the chemical process industry grouping, the Research Corp. study considered 24 different source categories and their associated pollutants. Notably, within the chemical process industry listings in the 1977 final report and in the 1976 draft report (as incorporated into the Congressional Record) there is no listing which refers to ethanol production, ethanol fuel production, or corn milling operations. Of course, it is worth noting that although the first U.S. ethanol fuel plant was built by the U.S. Army in the 1940's, few, if any, ethanol fuel production facilities existed in the mid to late 1970's. Thus, at the time that Congress drafted section 169(1), for which it appears to have relied

on the draft Research Corp. study developed for NSPS purposes, plants producing ethanol were not listed among the types of facilities that fell within the category for chemical processing industries.

D. How have ethanol production facilities been considered under the PSD Program?

In addition to the term “major emitting facility” addressing sources within specified source categories which emit, or have the potential to emit, 100 tons per year or more of any air pollutant, this term also establishes a potential to emit threshold of 250 tons per year or more of any air pollutant for sources which fall outside of the source categories specified in section 169(1) of the Act. Thus, for new sources which are locating in attainment areas, the applicable major source threshold under the PSD program will be either 100 tons per year for sources in one of the source categories specifically listed in section 169(1), or 250 tons per year for all other sources. For new sources located in nonattainment areas, the applicable thresholds for the nonattainment pollutants will depend on the nonattainment area’s status. For operating sources in attainment areas, the relevant major source threshold under title V is 100 tons per year, but is lowered in nonattainment areas for the relevant pollutant.

In its August 7, 1980, rulemaking, EPA decided to use the 2-digit “Major Group” listings as defined by the SIC manual of 1972 (as amended in 1977)<sup>3</sup> as its basis for defining a source under PSD and nonattainment NSR. Thus, to determine which source category a source belongs to, and therefore what major source thresholds apply, EPA

---

<sup>3</sup> The version of the SIC code manual that is used for purposes of classifying sources under the title V operating permits is the 1987 SIC Manual. See, e.g., the definition of “Major Source” in 40 CFR 70.2. However, there are no differences between these manuals in terms of how wet corn milling facilities and facilities which produce “ethanol, industrial” or “ethyl alcohol, industrial (nonbeverage)” are classified.

determines which 2-digit “Major Group” code applies to the source. These classifications are based on the source’s primary activity, which is determined by the source’s principal product(s) – either produced or distributed – or services rendered. (August 7, 1980, 45 FR 52676, 52694).

It is important to note that the Standard Industrial Classification (SIC) manual was not designed for regulatory application, but was developed primarily for the collection of economic statistics and for the consistent comparison of economic data between various sectors of the U.S. economy. The use of SIC codes by EPA is also not required by the Act or even mentioned in the Act. As explained above, EPA chose to use SIC codes to define sources, including sources within the 28 listed source categories. EPA’s regulatory use of SIC codes does not have to follow the exact approach taken by the SIC manual. While it may be appropriate for economic statistical purposes to place ethanol fuel and ethanol fit for human consumption in different categories (“Major Groups” 28 and 20 respectively), this does not limit EPA’s discretion to treat both types of ethanol in the same manner for regulatory purposes.

### Ethanol Production Facilities:

In the U.S., ethanol (ethyl alcohol) is currently being produced either synthetically or through the fermentation of sugars derived from agricultural feedstocks. For ethanol produced synthetically, either ethylene or hydrogen (H<sub>2</sub>) and carbon monoxide (CO) are used as the feedstock. As of 2002, only two facilities in the U.S. were producing synthetic ethanol. (Memorandum from Mary Lalley, Easter Research Group, Inc., to Bob Rosensteel, U.S. EPA, July 2, 2002).

The majority of ethanol produced in the U.S. is produced from sugar or starch-based feedstock (e.g., corn, millet, beverage waste) using two basic processes: the dry mill process and the wet mill process. The key difference between these two processes is the initial treatment of the grain. In the wet mill process, the grain is soaked and then ground to remove germ, fiber, and gluten from the starch prior to cooking. In the dry mill process, the grain or feedstock is not separated into its constituent parts prior to cooking.

Both wet and dry milling operations produce ethanol as well as other co-products. “Co-products from the dry mill process, separated from the ethanol in the distillation step, include distiller’s dried grain (DDG) and solubles (S), which are often combined and referred to as DDGS. DDGS is used as an animal feed. In the wet mill process, co-products are separated from the ethanol production process in the initial grinding or milling step. Co-products from the wet milling process include fiber and gluten, which are used for animal feed and corn oil.” (Memorandum from Mary Lalley, July 2, 2002).

Most new ethanol production capacity comes from dry mill processing facilities (R.W. Beck, Inc., Renewable Energy Bulletin, Special Projects). Wet milling operations,

on the other hand, can produce ethanol, including ethanol for fuel, but are typically primarily engaged in producing starch, syrup, oil, sugar, and by-products, such as gluten feed and meal. For ethanol which will be used as fuel, toxic solvents (typically gasoline) are added to the ethanol to render it unfit for human consumption (denatured). This additional step is required to develop ethanol fuel regardless of whether the dry or wet mill process was employed to develop the initially potable ethanol. It is EPA's understanding that whether the wet or dry milling process is used, the process for making ethanol for food products, and that for making ethanol for fuel, is essentially the same up until the step at which gasoline or other toxic solvents are added in the process for using ethanol for making fuel.

As noted above, one of the source categories in the list of 28 source categories included in the "major emitting facility" definition (and in the NSR and title V regulations) is chemical process plants.<sup>4</sup> The major group SIC code (2-digit SIC code) in which chemical process plants falls is major group 28 – "Chemicals and Allied Products." The 4-digit SIC code which is directly applicable to the production of ethanol for fuel is SIC code 2869 – "Industrial Organic Chemicals, Not Elsewhere Classified." "Ethanol, industrial" and "Ethyl alcohol, industrial (nonbeverage)" are both listed in the SIC Manual as a specific product within this 4-digit category.

---

<sup>4</sup> It is important to note that although this document refers to the list of 28 source categories, you will actually see a list of 27 categories when you review the NSR and Title V regulations. This is because when the list was first promulgated on August 7, 1980 (45 FR 52676), the hydrofluoric, sulfuric, and nitric acid plants were listed as one category and an additional category (the 27<sup>th</sup> category) was added to address sources regulated by section 111 or 112 standards as of August 7, 1980.



In addition to the specific references in the SIC Manual relative to ethanol production, EPA also specifically addressed this issue in an internal EPA memorandum dated March 31, 1981, from Edward Reich, Director, Division of Stationary Source Enforcement, Office of Enforcement to the Directors, Air and Hazardous Materials Divisions, Regions I-X, and the Directors, Enforcement Divisions, Regions I-X. In this memo, Mr. Reich states the following:

This is to clarify the proper classification for ethanol fuel plants for purposes of PSD applicability. The Agency regards any source listed under major Group 28 of the Standard Industrial Classification (SIC) manual as a chemical process plant. Ethanol fuel is listed under SIC Group 286: Industrial Organic Chemicals. Ethanol fuel plants should therefore be considered a chemical process plant subject to the 100 tons per year threshold for PSD review.

Given that ethanol fuel production is specifically listed under the 2-digit “Major Group” SIC code of 28 in the SIC manual and given the above-noted memo, EPA has historically required production facilities or units which produce ethanol fuel to be classified as chemical process plants (regardless of whether they are wet or dry corn mills); such facilities are therefore subject to the 100 tons per year threshold under PSD.

Wet milling operations are specifically addressed under SIC Code 2046 (“Wet Corn Milling”) in the SIC Manual. Although the SIC Manual lists this category as “Wet Corn Milling” the description for this 4-digit category specifically notes that this category applies to establishments primarily engaged in milling corn or sorghum grain (milo) by the wet process. The relevant Major Group for “Wet Corn Milling” is “Major Group” 20 – “Food and Kindred Products.” Accordingly, units at wet corn milling operations engaged in producing the food products noted in the SIC Manual are classified under “Major Group” 20. Since they do not fall within one of the 28 categories of

industrial sources listed in section 169(1) of the Act and in the PSD regulations, wet corn milling units primarily engaged in producing food products are subject to the 250 tons per year threshold under PSD.

As discussed above, both wet and dry corn milling processes can produce ethyl alcohol for human consumption. Our understanding is that the processes in these facilities are identical to a facility which produces ethyl alcohol for fuel with the exception of an additional step in which a toxic solvent is added to the ethyl alcohol to render it unfit for human consumption.

Some industry stakeholders believe that it is unfair for EPA and States to have applied two different thresholds, i.e., a 100 tons per year threshold for ethanol fuel production and a 250 tons per year threshold for ethanol intended for human consumption, especially since the processes are the same except for the additional step of adding toxic solvents to the ethyl alcohol. Some stakeholders have mentioned to EPA that this permitting practice is not consistent. EPA requests information on (1) whether the corn milling processes for making ethanol for fuel and ethanol for food are essentially the same up until the step at which gasoline or another toxic solvent is added to the ethanol intended for fuel; (2) what steps, if any, take place beyond the step at which gasoline or another toxic solvent is added to the ethanol intended for fuel; (3) what steps in the ethanol intended for food (e.g., beverage) process are different from the ethanol for fuel process; (4) whether the technology used to manufacture the ethanol fuel and ethanol for food is the same technology; and (5) how the corn milling process for producing industrial ethanol varies from the corn milling processes used to produce ethanol fuel or ethanol fit for human consumption. Finally, we also request information on how EPA

and States have permitted corn mills that produce ethanol for fuel, ethanol for food, and industrial ethanol.

### **III. Today's Proposed Rule**

#### **A. What is being proposed?**

Today we are taking comment on two options that EPA is considering with respect to the treatment of wet and dry corn mills that produce either ethanol for fuel or ethanol for food under the “major emitting facility” thresholds. Under the first option, EPA proposes to redefine chemical process plants under the definition of “major emitting facility” found in section 169(1) of the Act to exclude wet and dry corn milling facilities which produce ethanol fuel. Under the second option, we would continue to include wet and dry corn milling facilities that produce ethanol fuel within the definition of chemical process plants and within the definition of “major emitting facility” found in section 169(1). EPA's preferred option is Option 1. If EPA selects Option 1, we would base this proposal on several factors: (1) EPA's discretion to define chemical process plants to exclude wet and dry corn milling facilities; and (2) the desire to treat wet and dry corn milling facilities in the same manner under the PSD, nonattainment NSR, and title V permits programs due to the similar processes that are employed by these facilities regardless of whether ethanol fuel or potable ethanol is being produced.

The PSD and nonattainment NSR regulations that we are proposing to amend today if we select option 1 are found in 40 CFR 51.165, 51.166, 52.21, and 52.24. We are not proposing to amend Appendix S of part 51 in today's action. The title V regulations that we are proposing to amend today are found in 40 CFR parts 70 and 71.

In this proposal, we are soliciting comment on whether wet and dry corn milling facilities that produce ethanol for fuel should continue to be considered a part of the chemical process plants source category. In addition, we are also soliciting comment on whether other types of facilities which produce ethanol fuel, such as those using cellulosic biomass feedstocks, e.g., solid waste, agricultural wastes, wood, and grasses, should also be considered for exclusion from the chemical process plants definition due to having production processes similar to those found at wet and dry milling facilities in cases where potable ethanol or ethanol fuel is being produced. We request information, including process flow diagrams, on the processes used to develop ethanol fuel using the above-noted feedstocks.

B. What additional changes are being proposed for wet and dry corn milling facilities?

Two of the regulatory changes being proposed today address the major source threshold for PSD sources, i.e., 40 CFR 51.166(b)(1)(i)(a) and 52.21(b)(1)(i)(a). The remaining proposed regulatory changes address when fugitive emissions are counted for purposes of determining whether a source is a major source under the PSD, nonattainment NSR, or title V programs.

Section 302(j) of the Act states:

Except as otherwise expressly provided, the terms ‘major stationary source’ and ‘major emitting facility’ mean any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator).

When the list of source categories relative to the definition of “major emitting facility” was first promulgated in the NSR regulations on August 7, 1980 (45 FR 52676), this same list was promulgated in the NSR regulations for determining from which source

categories fugitive emissions were to be counted in determining whether a source was a major source. These 28 source categories were promulgated as a result of the decision in *Alabama Power v. Costle*, 626 F. 2d. 323 (D.C. Cir. 1979). In *Alabama Power*, the court held that “fugitive emissions are to be included in determining whether a source or modification is major only if and when EPA issues an appropriate legislative rule.” EPA conducted rulemaking by which it identified the 28 source categories for which fugitive emissions would be counted in determining whether a source is a major source. We also identified the two criteria by which we would decide whether a source’s fugitive emissions would be included in major source determinations: (1) sources in the category could degrade air quality significantly, and (2) there were no unreasonable costs compared to benefits associated with listing the category. See 49 FR 43,203 (1984).

However, as to the 28 initial source categories listed under section 302(j), EPA provided no discussion of the types of sources within the 28 source categories, nor any specific analyses associated with the development of this list, when the list was proposed (1979) and then promulgated (1980). Thus, the term “chemical process plants” was included in the list developed under section 302(j) of source categories whose fugitive emissions would be counted in a determination of whether it is a major source, even though no specific analysis was done as to that source category. Furthermore, EPA also did not perform any analysis of the specific types of plants that may have fallen within the category of “chemical process plants.”

Thus, pursuant to section 302(j) of the Act, EPA by rulemaking listed categories of sources from which fugitive emissions shall be included for purposes of determining whether a source is a “major stationary source.” One of the categories of sources on that

list is chemical process plants. If we adopt Option 1, we are not proposing to change the list of categories that we developed by rule under 302(j). However, we are proposing to change the definition of chemical process plants to exclude wet and dry corn milling facilities. Since we are not changing the list of source categories that we listed under section 302(j), but merely redefining one of those listed categories, we do not believe that it is now necessary to conduct a rulemaking which meets the requirements of 302(j) of the Act in order to redefine when we count fugitive emissions relative to chemical process plants. We solicit comment, however, on whether it is appropriate to define chemical process plants to exclude wet and dry corn milling facilities for the purpose of determining when fugitives are to be counted in major source determinations under PSD, nonattainment NSR, and title V without specifically addressing the requirements associated with a 302(j) rulemaking.

#### 1. EPA's discretion to modify its approach if we Adopt Option 1

As explained previously (See "II. Background"), we have no knowledge that ethanol production facilities, ethanol fuel production facilities, or corn milling facilities were specifically considered by Congress when major emitting facilities as specified in section 169(1) of the Act were being defined. We do know, however, that none of these facilities were specifically listed within the chemical process plants source category in either the draft report (as incorporated into the Congressional Record) or in the final Research Corp. report entitled "Impact of New Source Performance Standards on 1985 National Emissions from Stationary Sources." (See 122 Cong. Rec. 24,520-23 (1976)). This report by EPA's contractor (Research Corp.) appears to be a significant source upon which Congress relied when it drafted section 169(1) and, more specifically, when it

developed the list of identified source categories in this statutory provision. Therefore Congress, when it enacted section 169(1), appears not to have expressed its intent as to whether ethanol production facilities, ethanol fuel production facilities, or corn milling facilities should be considered within the “chemical process plants” source category.

As explained previously, in its August 7, 1980, rulemaking, EPA decided, in the exercise of its discretion and in the absence of an expression of Congressional intent on the issue, to use the 2-digit “Major Group” listings as defined by the SIC manual of 1972 (as amended in 1977) as its basis for defining a source. Using this approach to define a source, a facility producing ethanol fuel would be classified under “Major Group 28 – Chemicals and Allied Products” given that “Ethanol, industrial” and “Ethyl alcohol, industrial (nonbeverage)” are two specific products under the more specific 4-digit SIC code of “Industrial Organic Chemicals, Not Elsewhere Classified.”

Although EPA’s policy, as defined in its March 31, 1981, memorandum above, has been to define wet and dry corn milling facilities which produce ethanol fuel as being within Major Group 28, EPA has the discretion to modify its classification of these facilities through notice and comment rulemaking. Congress did not indicate an intent, either in the statutory provision, or in the legislative history, to define ethanol fuel production facilities or wet and dry corn milling facilities as being within the chemical process plants source category, nor did Congress assign such facilities to any particular 2-digit “Major Group” within the SIC system. Given this absence of Congressional intent on the issue, EPA has the discretion to promulgate reasonable regulations on the appropriate treatment of plants that manufacture ethanol for fuel under section 169(1) of the CAA and under the PSD, nonattainment NSR, and title V programs.

EPA's discretion to modify its approach given that Congress has not spoken directly to how wet and dry corn mills are to be classified is allowed by the *Chevron* decision (Chevron U.S.A., Inc. v. Natural Res. Def. Council, 467 U.S. 837 (1984)). This decision was recently explained in New York v. EPA, 413 F.3d 3, 18 (D.C. Cir. 2005) as follows:

As to EPA's interpretation of the CAA, we proceed under Chevron's familiar two-step process. *See* 467 U.S. at 842-43. In the first step ('*Chevron* Step 1'), we determine whether based on the Act's language, legislative history, structure, and purpose, 'Congress has directly spoken to the precise question at issue.' *Id.* at 842. If so, EPA must obey. But if Congress's intent is ambiguous, we proceed to the second step ('*Chevron* Step 2') and consider 'whether the agency's [interpretation] is based on a permissible construction of the statute.' *Id.* at 843. If so, we will give that interpretation 'controlling weight unless [it is] arbitrary, capricious, or manifestly contrary to the statute.' *Id.* at 844.

As a result, although it remains EPA's policy to classify sources under the PSD, nonattainment NSR, and title V programs using the 2-digit "Major Group" classification system as defined by the SIC manual, EPA is proposing to depart from this approach in classifying wet and dry corn mills. As summarized above, EPA has the discretion to modify its approach to classifying sources as appropriate through notice and comment rulemaking if it meets the criteria outlined in *Chevron*.

## 2. Similar treatment of wet and dry corn milling facilities regardless of the product produced

Within this rulemaking, the two basic processes that are discussed for producing ethanol fuel are the wet mill and dry mill process. Both of these processes result in fermentation ethanol as opposed to synthetic ethanol. As discussed above, the primary feedstock for fermentation ethanol is corn, millet, or beverage waste; for synthetic ethanol, it is ethylene or hydrogen (H<sub>2</sub>) and carbon monoxide (CO).



As also discussed above, the key differences between the wet and dry mill processes is the initial treatment of the grain or feedstock. Additionally, in situations where ethanol fuel is being produced, whether as a result of the dry or wet milling process, a denaturing step is added to the process in order to make the ethanol unfit for human consumption. This denaturing step is a step in which a small amount of gasoline (2-5%) or other toxic solvents are added to the ethanol. This additional step is what causes the ethanol fuel production facility to be classified under “Major Group” 28 of the SIC manual. If the gasoline or other toxic solvents were not added to the ethanol in this additional step, the facility would produce ethanol fit for human consumption and would be classified under “Major Group” 20 – “Food and Kindred Products.” In this latter classification, a facility would not be subject to the 100 tons per year threshold under the PSD regulations, but instead would be subject to the 250 tons per year threshold under these regulations. The Agency does not believe that the denaturing step makes an ethanol fuel production facility into a chemical process plant and therefore prefers to subject production facilities which produce ethanol fit for human consumption and those production facilities which produce ethanol fuel to the same major source threshold.

As discussed in this section, if EPA adopts its preferred option, Option 1, EPA is proposing to depart from its practice of classifying ethanol fuel production facilities, which use the wet or dry milling process, as chemical process plants. EPA solicits comment on whether we should retain our current practice of classifying an ethanol fuel production facility, which uses the wet or dry milling process, as a chemical process plant, or if the Agency should adopt a different approach for classifying these facilities such as is discussed above. EPA also solicits comment on whether characteristics of the

wet and dry milling processes for producing ethanol fuel are such that they are in important ways distinct from other sources that are included in the “chemical process plants” source category.

B. What are the implications of changing the classification of facilities which produce ethanol fuel as a result of the wet or dry milling process?

The obvious implication of changing the classification of facilities which produce ethanol fuel as a result of the wet or dry milling process to a classification other than chemical process plants is that this will allow these sources to expand production without triggering PSD permitting requirements, as a result of raising the applicable major source threshold from 100 tons per year to 250 tons per year. Many existing sources have taken PTE limits just below the 100 tons per year threshold to avoid PSD. Such sources would be able to raise these limits to just below 250 tons per year if the proposed rule is finalized as proposed. Alternatively, even without raising the current 100 tons per year threshold, sources could expand production to some extent without triggering PSD, nonattainment NSR, or title V permitting requirements, because the calculation of actual and potential emissions would no longer need to include fugitive emissions at the facilities. This is because if the proposed rule is finalized as proposed, fugitive emissions would no longer be counted in determining whether the facility producing ethanol fuel as a result of the wet or dry milling process is a major source under these programs.<sup>5</sup>

Moreover, such a change may have implications as to the use of the SIC Manual

---

<sup>5</sup> A wet or dry corn milling facility may be required to count its fugitive emissions to determine whether it is a major source regardless of whether today’s proposal is finalized as proposed. This is because even if the facility isn’t considered to be a part of the chemical process plants source category, one or more units within the facility may be considered to fall within another source category for which fugitive emissions are

and SIC codes in the PSD, nonattainment NSR, and title V programs. This classification process is important and has implications in determining (1) what major source threshold under the PSD program is applicable to a source; (2) whether fugitive emissions from a source are considered in determining whether the source is subject to the PSD, nonattainment NSR, and title V programs; and (3) how a source is to be aggregated with other collocated sources at the site to determine whether a major source exists. The Agency does not believe, however, that this proposed change would have a significant impact on the use of the SIC codes for other source categories in the PSD, nonattainment NSR, and title V programs.

Another implication of a classification change is that it would create a disparity in how facilities which produce ethanol fuel as a result of the dry or wet milling process are considered under the NSR and title V programs versus how other ethanol fuel producers are considered under these programs. However, currently, ethanol fuel from corn milling accounts for the vast majority of ethanol fuel production from agricultural feedstocks.

A number of existing dry mills and wet mills which produce ethanol fuel have installed emission controls and have synthetic minor permits that limit plant-wide emissions to less than 100 tons per year. Changing the facility classification such that the major source threshold would be 250 tons per year could allow these sources to increase their emissions by more than 149 tons and still remain minor sources. EPA is seeking comment on the potential environmental effects of increasing the major source threshold from 100 tons per year to 250 tons per year, and eliminating the requirement to count fugitive emissions in these threshold determinations, for ethanol fuel facilities which

---

required to be counted.

have been proposed for construction and which will employ the wet or dry milling process.

C. What are the implications of not changing the classification for facilities which produce ethanol fuel as a result of the dry or wet milling process?

If the classification for facilities which produce ethanol fuel as a result of the dry or wet milling process is not changed to a classification other than chemical process plants, then these facilities will continue to be subject to the 100 tons per year threshold under the PSD program and will be required to continue counting their fugitive emissions in determining whether they are subject to PSD or nonattainment NSR (whichever program is applicable) and title V. This could potentially stymie the growth of the ethanol production industry which, in turn, could lead to reduced energy diversification and independence in this country. Industry information shows that these facilities have experienced robust growth in recent years, even though they were subject to the major source threshold of 100 tons per year and the requirement to count fugitive emissions in their major source determinations. However, it is unclear whether this growth would have been greater without the current 100 tons per year threshold.

**IV. Statutory and Executive Order Reviews**

A. Executive Order 12866 - Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it is determined that this rule is a "significant regulatory action" because it raises policy issues arising from the President's priorities. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

#### B. Paperwork Reduction Act

This action does not impose any new information collection burden. We are not promulgating any new paperwork requirements (e.g., monitoring, reporting, recordkeeping) as part of today's proposed action. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR parts 51 and 52) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and has assigned OMB control number 2060-0003, EPA ICR number 1230.17. A copy of the OMB approved

Information Collection Request (ICR) EPA ICR number 1230.17 may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Avenue, NW, Washington, DC 20460 or by calling (202) 566-1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

#### C. Regulatory Flexibility Analysis (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, a small entity is defined as: (1) a small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (see 13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. We are only requesting public comment on whether or not corn milling facilities should be subject to the same major source threshold regardless of whether they produce ethanol fuel or ethanol fit for human consumption. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

#### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule

for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation as to why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan.

The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector.

Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### E. Executive Order 13132 - Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism



implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposal rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA is soliciting comment on today's proposal from State and local officials.

#### F. Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 13175, November 9, 2000, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. There are no Tribal authorities currently issuing major NSR and title V permits. Thus, Executive Order 13175 does not apply to this rule.

Although Executive Order 13175 does not apply to this proposed rule, EPA specifically solicits comment on this proposed rule from tribal officials.

G. Executive Order 13045 - Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

Today's action is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. Today's proposed action is not expected to present a disproportionate environmental health or safety risk for children.

H. Executive Order 13211 - Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Today's action is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

## I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical.

Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

### List of Subjects

#### 40 CFR Parts 51 and 52

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

#### 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 71

Environmental protection, Administrative practice and procedure, Air pollution  
control, Reporting and recordkeeping requirements.

---

Dated:

---

Stephen L. Johnson,  
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as set forth below.

**PART 51—[Amended]**

1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401, et seq.

**Subpart I—[Amended]**

2. Section 51.165 is amended by revising paragraphs (a)(1)(iv)(C)(20) and (a)(4)(xx) to read as follows:

**§ 51.165 Permit requirements.**

(a) \* \* \*

(1) \* \* \*

(iv) \* \* \*

(C) \* \* \*

(20) Chemical process plants – which does not include wet and dry corn milling facilities which produce ethanol fuel;

\* \* \* \* \*

(4) \* \* \*

(xx) Chemical process plants – which does not include wet and dry corn milling facilities which produce ethanol fuel;

\* \* \* \* \*

3. Section 51.166 is amended by revising paragraphs (b)(1)(i)(a), (b)(1)(iii)(t), and (i)(1)(ii)(t) to read as follows:

**§ 51.166 Prevention of significant deterioration of air quality.**

\* \* \* \* \*

(b) *Definitions.* \* \* \*

(1)(i) *Major stationary source* means:

(a) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants (which does not include wet and dry corn milling facilities which produce ethanol fuel), fossil-fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

\* \* \* \* \*

(iii) \* \* \*

(t) Chemical process plants – which does not include wet and dry corn milling facilities which produce ethanol fuel;

\* \* \* \* \*

(i) *Exemptions.*

(1) \* \* \*

(ii) \* \* \*

(t) Chemical process plants – which does not include wet and dry corn milling facilities which produce ethanol fuel;

\* \* \* \* \*

## **PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

**Subpart A—[Amended]**

2. Section 52.21 is amended by revising paragraphs (b)(1)(i)(a), (b)(1)(iii)(t), and (i)(1)(vii)(t) to read as follows:

**§ 52.21 Prevention of significant deterioration of air quality.**

\* \* \* \* \*

(b) *Definitions.* \* \* \*

(1)(i) *Major stationary source* means:

(a) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants (which does not include wet and dry corn milling facilities which produce ethanol fuel), fossil-fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

\* \* \* \* \*

(iii) \* \* \*

(t) Chemical process plants – which does not include wet and dry corn milling facilities which produce ethanol fuel;

\* \* \* \* \*

(i) *Exemptions.*

(1) \* \* \*

(vii) \* \* \*

(t) Chemical process plants – which does not include wet and dry corn milling facilities which produce ethanol fuel;

\* \* \* \* \*

3. Section 52.24 is amended by revising paragraphs (f)(4)(iii)(t) and (h)(20) to read as follows:

**§ 52.24 Statutory restrictions on new sources.**

\* \* \* \* \*

(f) \* \* \*

(4) \* \* \*

(iii) \* \* \*

(t) Chemical process plants – which does not include wet and dry corn milling facilities which produce ethanol fuel;

\* \* \* \* \*

(h) \* \* \*

(20) Chemical process plants – which does not include wet and dry corn milling facilities which produce ethanol fuel;

\* \* \* \* \*

**PART 70—[AMENDED]**

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

2. Section 70.2 is amended by revising paragraph (2)(xx) of the definition of *Major source* to read as follows:



**§70.2 Definitions.**

\* \* \* \* \*

*Major source* \* \* \*

(2) \* \* \*

(xx) Chemical process plants – which does not include wet and dry corn milling facilities which produce ethanol fuel;

\* \* \* \* \*

**PART 71—[AMENDED]**

1. The authority citation for part 71 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

Subpart A—[Amended]

2. Section 71.2 is amended by revising paragraph (2)(xx) of the definition of *Major source* to read as follows:

**§ 71.2 Definitions.**

\* \* \* \* \*

*Major source* \* \* \*

(2) \* \* \*

(xx) Chemical process plants – which does not include wet and dry corn milling facilities which produce ethanol fuel;

\* \* \* \* \*